L. 23. c. 2. (58)

For Sarah Cutler.

# The CASE of SARAH CUTLER, Reſpondent, At the SUIT of JOSEPH BROCK, Appellant.

FRancis *Cutler*, the Reſpondent *Sarah*'s late Husband, and to whom ſhe is Executrix, was intitled as he was Executor to his Mother to a Bond of 200 *l.* conditioned for the Payment of 100 *l.* to her, entred into by *Thomas Barney* and *John Barney*: To the Payment of which Money and Intereſt, one *Francis Windham*, who married the Relict and Executrix of the ſaid *John Barney*, and his Wife, were become liable.

The ſaid *Francis Cutler* being acquainted with, and related to the Appellant, who is a common Sollicitor in Chancery, did imploy him to get in the ſaid Debt for the ſaid *Francis Cutler*; And thereupon the Appellant acquainted *Cutler*, that the Appellant was intitled as Aſſignee to a Statute of 200 *l.* from one *Robert Bowman* of *Oxford* to one *William Baines*; and propoſed to exchange the ſame Statute for the ſaid Bond; But the ſaid *Cutler* refuſed to agree to any ſuch Exchange. However, having Buſineſs at *Oxford*, and to oblige the Appellant to be careful of the ſaid *Cutler*'s Buſineſs, he did take the ſaid Statute with him to *Oxford*, to enquire touching the ſaid *Bowman*; which accordingly the ſaid *Cutler* did, and found the ſaid *Bowman* was poor; and therewith acquainted the Appellant, and to him redelivered the ſaid Statute, which remained in the Appellants hands, until after the death of the ſaid *Cutler*.

The ſaid *Cutler* exhibited his Bill in Chancery againſt the ſaid *Francis Windham*, and his Wife, the Executrix of the ſaid *John Barney*; and ſhe dying pending that Suit: In order to make proper Parties to the ſaid Bill, Adminiſtration *de bonis non* to the ſaid *John Barney*; and alſo Adminiſtration to the ſaid *Thomas Barney*, were ſued out by the direction of the ſaid *Cutler*: And after ſome further Proceedings in the ſaid Cauſe, againſt the ſaid *Francis Windham*, he came to an Agreement with the ſaid *Cutler*, to pay him 120 *l.* in full Satisfaction of the Debt due on the ſaid Bond, which was accordingly paid to the ſaid *Cutler*.

There happening ſome Diſpute touching the Releaſe, which was to be given by the ſaid *Cutler* to the ſaid *Francis Windham*, thereupon until the ſame Releaſe ſettled, a Note was given for the ſaid Money by the ſaid *Cutler*, in which the Appellant joyned with him: But for the Appellant's Indemnity he had Counter-ſecurity, by Bond, from *Cutler*.

The Appellant was Sollicitor for the ſaid *Cutler* in his ſaid Cauſe, and in procuring the ſaid Adminiſtrations; which were obtained, and the ſame Suit carried on, at the Charges of the ſaid *Cutler*, who paid the Appellant's Bills amounting to 52 *l.* 15 *s.*

The Appellant exhibited a Bill in Chancery grounded upon an Agreement in Writing touching an Exchange of the ſaid Statute for the ſaid Bond; when in truth there never was any ſuch Writing, nor was there any Proof made of it: But to put a Colour of the Matter, after the death of *Cutler*, there was ſent to the Reſpondent his Executrix the ſaid Stature, by the ſaid Appellant, who refuſed to take the ſame again, and threatned the Perſon by whom it was ſent.

The Appellant brought his Cauſe to hearing; And there being no Cauſe in Equity to give the Appellant any Releaſe, his Bill was diſmiſt with Coſts: And the ſaid Statute being left in Court for the Appellant's uſe, It was ordered that the Regiſter ſhould deliver the ſame to the Appellant. Which Diſmiſſion this Reſpondent hopeth will be confirmed by this High and Honourable Court.

The Case of

# SARAH CUTLER.

To be heard

*January* 10. 1692.